

## **TITLE 16. BOARD OF PODIATRIC MEDICINE**

NOTICE IS HEREBY GIVEN that the Board of Podiatric Medicine (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, Mimi Modisette Conference Room, 400 R Street, Suite 3020, Sacramento, CA, at 9:00 AM, on January 28, 2005. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Mischa Matsunami in this Notice, must be received by the board at its office not later than 5:00 p.m. on January 26, 2005 or must be received by the board at the hearing. The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2470 of the Business and Professions Code and Section 11400.20 of the Government Code, and to implement, interpret or make specific Sections 11400.20 and 11425.50(e) of the Government Code, the board is considering changes to Division 13.9 of Title 16 of the California Code of Regulations as follows:

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Amend Section 1399.710, Disciplinary Guidelines.

Senate Bill 523 (Stats. 1995, Chapt. 938; Kopp) provided that a penalty in an administrative disciplinary action may not be based on a guideline unless it has been adopted as a regulation in accordance with the Administrative Procedure Act. The board adopted the disciplinary guidelines as an administrative regulation, which became effective October 1997. The regulation incorporated by reference the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders," revised November 1, 1996. Subsequent revisions to the guidelines adopted by the Board were later incorporated by reference.

On October 8, 2004, the board approved to incorporate by reference, its recently revised Manual of Disciplinary Guidelines in order to improve the efficiency with which enforcement situations are managed.

Because of the small licensee population, podiatric medical cases occur far less often than standard medical cases. As a result, while the Board of Podiatric Medicine (BPM) utilizes services provided by the Medical Board of California (MBC) with regard to

enforcement activity, those involved are often not as familiar with the Disciplinary Guidelines held by BPM as they are with those currently enforced by MBC. This proposal would make the Board's Manual of Disciplinary Guidelines consistent with those enforced by the MBC, and would therefore enable the MBC's Central Complaint Unit, investigative staff, Deputy Attorneys General, and Administrative Law Judges to review and apply the BPM's guidelines in a more efficient manner.

The proposed regulation would incorporate by reference, the October 8, 2004 revision to "A Manual of Disciplinary Guidelines and Model Disciplinary Orders."

### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: none

Nondiscretionary Costs/Savings to Local Agencies: none

Local Mandate: none

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: none

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

### AND

The following studies/relevant data were relied upon in making the above determination:

Because disciplinary actions are directed only at the relatively few licensees who violate the law, the Board has determined that the proposed amendments will not have a significant economic impact on California businesses. Further, the proposed amendments are mostly of technical nature, and will serve primarily to establish consistency between the Board's regulations and those currently enforced by the Medical Board of California.

Impact on Jobs/New Businesses:

The board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or

existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has determined that the proposed regulations would not affect small businesses. New language establishes consistency with the Disciplinary Guidelines currently enforced by the Medical Board of California, and impacts only those licensees who are found to have violated the law.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Podiatric Medicine at 1420 Howe Avenue #8, Sacramento, California 95825-3291.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the website listed below.

### CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Name:	Mischa Matsunami
Address:	1420 Howe Avenue, Suite #8 Sacramento, CA 95825
Telephone No.:	(916) 263-0315
Fax No.:	(916) 263-2651
E-Mail Address:	Mischa_Matsunami@dca.ca.gov

The backup contact person is:

Name:	Jim Rathlesberger
Address:	1420 Howe Avenue, Suite #8 Sacramento, CA 95825
Telephone No.:	(916) 263-2647
Fax No.:	(916) 263-2651

Inquiries concerning the substance of the proposed regulations may be directed to Mischa Matsunami, (916) 263-0315.

Materials regarding this proposal can be found at:  
<http://www.bpm.ca.gov/lawsregs/index.htm>

**PROPOSED LANGUAGE  
BOARD OF PODIATRIC MEDICINE**

Adopt the following regulation in Division 13.9 of Title 16 of the California Code of Regulations:

Amend section 1399.710 as follows:

**1399.710. Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400, et seq.), the board shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines ~~and~~ with Model Disciplinary Orders" [revised ~~November 3, 2000~~ October 8, 2004] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Section 2470, Business and Professions Code and Section 11400.20, Government Code. Reference: Sections 11400.20 and 11425.50(e), Government Code.

**BOARD OF PODIATRIC MEDICINE**  
**INITIAL STATEMENT OF REASONS**

Hearing Date: January 28, 2005

Subject Matter of Proposed Regulations: Disciplinary Guidelines

Section(s) Affected:

Division 13.9 of Title 16, Disciplinary Guidelines:

Amend Section 1399.710

Specific Purpose of each adoption, amendment, or repeal:

Amend Section 1399.710, Disciplinary Guidelines.

Senate Bill 523 (Stats. 1995, Chapt. 938; Kopp) provided that a penalty in an administrative disciplinary action may not be based on a guideline unless it has been adopted as a regulation in accordance with the Administrative Procedure Act. The board adopted the disciplinary guidelines as an administrative regulation, which became effective October 1997. The regulation incorporated by reference the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines and Model Disciplinary Orders," revised November 1, 1996. Subsequent revisions to the guidelines adopted by the Board were later incorporated by reference.

On October 8, 2004, the board approved to incorporate by reference, its recently revised Manual of Disciplinary Guidelines in order to improve the efficiency with which enforcement situations are managed.

Because of the small licensee population, podiatric medical cases occur far less often than standard medical cases. As a result, while the Board of Podiatric Medicine (BPM) utilizes services provided by the Medical Board of California (MBC) with regard to enforcement activity, those involved are often not as familiar with the Disciplinary Guidelines held by BPM as they are with those currently enforced by MBC. This proposal would make the Board's Manual of Disciplinary Guidelines consistent with those enforced by the MBC, and would therefore enable the MBC's Central Complaint Unit, investigative staff, Deputy Attorneys General, and Administrative Law Judges to review and apply the BPM's guidelines in a more efficient manner.

### Factual Basis/Rationale:

The mission of the Board of Podiatric Medicine is to ensure protection of consumers under the laws of California through the setting and enforcement of contemporary standards and the provision of accurate and timely information that promotes sound consumer decision-making.

Article 12 of the Medical Practice Act specifies the grounds for discipline of a podiatric medical practitioner by the board. Most violations involve unprofessional conduct, which includes but is not limited to:

- Incompetence - the lack of possession of and failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by a responsible licensee
- Gross negligence - a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent licensee and which has or could have resulted in harm to the consumer
- Conviction of a crime - a crime substantially related to the qualifications, functions, or duties of the profession for which the license is issued. Examples include convictions involving sexual misconduct, patient abuse, illegal possession or use of dangerous drugs, or driving under the influence of drugs or alcohol.

Not all violations of the board's laws or regulations are of such a nature or severity that they warrant revocation of a license. In some cases, a more lenient penalty such as probation is sufficient to ensure consumer protection.

The board's disciplinary guidelines are intended to assist board members and the administrative law judges in imposing an appropriate penalty against a doctor of podiatric medicine who has violated the laws and regulations governing podiatric medicine.

The current disciplinary guidelines manual was last revised November 3, 2000. The Board voted to change certain guidelines and revise the manual, which is incorporated into this regulation. The proposed regulation would incorporate by reference, the October 8, 2004 revision to "A Manual of Disciplinary Guidelines and Model Disciplinary Orders."

### **Summary of Changes:**

Changes to language and numbering as identified below have been made for the purpose of establishing consistency between these guidelines and those enforced by the Medical Board of California.

1. **Revocation – Single Cause.** No Change.
2. **Revocation – Multiple Causes.** No Change.
3. **Suspension – Single Cause.** All of the suspension conditions were combined and renumbered to condition #4.
4. **Suspension – Multiple Causes (run concurrently).** See summary #3.
5. **Suspension – Multiple Causes (run concurrently).** See summary #3.
6. **Standard Stay Order.** Renumbered to condition #3, the suspension clause was deleted, and language requiring respondent to provide proof of service was incorporated with new condition #28 – Notification.
7. **Recovery of Investigation and Prosecution Costs.** Renamed to “Cost Recovery,” renumbered to condition #38 and technical changes, as necessary.
8. **Obey All Laws.** Renumbered to condition #30. Adds that in addition to obeying all laws, the respondent shall remain in full compliance with criminal probation, payments, and other orders.
9. **Quarterly Reports.** Renamed to “Quarterly Declarations,” renumbered to condition #31 and technical changes, as necessary. Adds a new provision that respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.
10. **Surveillance Program.** Renamed to “Probation Unit Compliance,” renumbered to condition #32, and technical changes, as necessary. Specifies conditions of compliance, requiring that respondent shall keep BPM informed of their current address and shall not use a post office box, that they shall not engage in practice in their residence, must maintain a current license, and shall notify the board in writing of travel lasting more than thirty days.
11. **Interview with Podiatric Medical Consultant.** Renumbered to condition #33, technical changes, as necessary, and renamed Interview with the Board or its Designee. Adds that respondent shall be available in person for interviews at their place of business or at the probation unit office either with or without prior notice.
12. **Tolling for Cessation of Practice.** Renamed to “Failure to Practice Medicine – California Resident,” renumbered to condition #35 and replaces old condition of Tolling of Probation. If respondent resides in California and stops practicing podiatric medicine for a total of two years, respondent’s license shall be automatically cancelled; periods of non-practice shall not relieve respondent of the responsibility



to comply with specified terms and conditions.

- 13. Tolling for Out-of-State Practice or Residence.** Renamed to “Residing or Practicing Out-of-State,” renumbered to condition #34 and technical changes, as necessary. Specifies that if respondent leaves the State of California to reside or practice, respondent shall notify the Board prior to the date of departure and return. If respondent’s period of temporary or permanent residence or practice outside California total two years, respondent’s license shall be automatically cancelled. For those licenses disciplined pursuant to B&P Code sections 141(a) and 2305, the two year period begins on the date probation is completed in that state.
- 14. Completion of Probation.** Renumbered to condition #36 and adds that respondent shall comply with all financial obligations not later than 120 calendar days prior to completion of probation.
- 15. Violation of Probation.** Renumbered to condition #37 and technical changes, as necessary. Adds that failure to fully comply with any term or condition of probation is a violation of probation.
- 16. Compliance with Required Continuing Medical Education.** Renumbered to condition #43 and deletes the CPR requirement, which is no longer a component of required CME’s.
- 17. Nolo Language.** Deleted this condition because the Attorney General’s office has standard language for all stipulated agreements.
- 17.1 License Surrender.** Renumbered to condition #39 and technical changes, as necessary. Adds that upon formal acceptance of the surrendered license, respondent shall deliver his or her license to the Board and shall no longer practice. The surrender shall be deemed a disciplinary action and if they reapply, the application shall be treated as a petition for reinstatement of a revoked certificate.
- 18. Actual Suspension.** Renumbered to condition #4. Adds that the suspension shall begin on the 16<sup>th</sup> day after the effective date of the decision. Condition #18a “posted Notice of Suspension” was also added to this condition.
- 18a. Posted Notice of Suspension** This condition was deleted and added to the Suspension Condition (refer to condition #18.)
- 19. Controlled Drugs – Total Restriction.** Renumbered to condition #5, technical changes, as necessary and changes “controlled drugs” to “controlled substances” in title.
- 20. Controlled Drugs – Surrender of DEA Permit.** Renumbered to condition #6,

changes “controlled drugs” to “controlled substances” in title, and changes “triplicate prescription forms and federal forms” to “state prescription forms and all controlled substances order forms”.

- 21. Controlled Drugs – Partial Restriction.** Renumbered to condition #7, technical changes, as necessary, and changes “controlled drugs” to “controlled substances” in title. Deletes optional language, which permitted respondent to prescribe, administer, dispense or order controlled substances in a specific Schedule in a specific setting. Adds optional language requiring respondent to surrender their DEA permit and reapply for a new DEA permit limited to those Schedules authorized by this order, and to submit proof of the cancellation and reissuance.
- 22. Drugs – Abstain from Use.** Renumbered to condition #9, technical changes, as necessary and changes “drugs” to “controlled substances” in title. Adds provisions that respondent shall notify the Board of the issuing practitioner’s name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number for any lawful prescriptions received.
- 23. Drugs – Exception for Personal Illness.** This section was deleted because this information is contained in the new condition #9.
- 24. Controlled Drugs – Maintain.** Renamed to “Controlled Substances – Maintain Records and Access to Records and Inventories” and renumbered to condition #8. Makes failure to maintain all records, provide immediate access to the inventory or make all records available for immediate inspection and copying on the premises, a violation of probation.
- 24a. Prescribing Practices Course.** Renumbered to condition #15, technical changes, as necessary, and adds provisions that the Prescribing Practices Course must be completed during the first 6 months of probation. It also adds that the Board will accept this Course if taken after the acts that gave rise to the Accusation, but prior to the effective date of the Decision.
- 25. Alcohol – Abstain from Use.** Renumbered to condition #10 and technical changes, as necessary.
- 26. Biological Fluid Testing.** Renumbered to condition #11 and adds provisions that a certified copy of a laboratory test result may be received as evidence in any proceedings and respondent’s failure to submit or complete a biological fluid test shall result in a violation of probation.
- 27. Rehabilitation Program – Alcohol or Drug.** Renumbered to condition #12 and technical changes, as necessary. Adds criteria for approving programs and institutes safeguards in the event it is determined that the respondent cannot

practice podiatric medicine safely.

- 28. Community Service – Free.** Renumbered to condition #13 and technical changes, as necessary. Adds that respondent submit a plan to complete community service within a specific period; who needs to receive copies of the Decision prior to the start of the community service; that respondent must submit proof of compliance to the Board; and that community service performed prior to the effective date of the Decision will not be accepted.
- 29. Education Course.** Renumbered to condition #14 and technical changes, as necessary. Specifies that within 60 calendar days of the effective date of the Decision, respondent shall submit an educational program and the educational courses shall be limited to classroom, conference or seminar settings that are Category I certified Continuing Medical Education (CME).
- 29a. Ethics.** Renamed to “Ethics Course,” renumbered to condition #17 and adds that an Ethics Course taken after the acts that gave rise to the Accusation, but prior to the effective date of the Decision may be accepted. Respondent shall also submit a certificate of completion with a specified period of time.
- 30. Clinical Training Program.** Renumbered to condition #19, changes the date of enrolling from 90 to 60 days, and allows the respondent to enroll in programs equivalent to the PACE Program, and incorporates information from previous condition #30a. Adds three optional conditions: Condition Precedent, Condition Subsequent, and Participation in a Professional Enhancement Program after the completion of the clinical training program.
- 30a. Physicians Assessment & Clinical Education (PACE) Program.** This section was deleted (refer to new condition #19.)
- 31. Examination, Oral Clinical** Renumbered to condition #20, technical changes, as necessary, removed the wording “oral Clinical” from the title, and adds that the respondent must take and pass a written examination (National Board of Podiatric Medical Examiners Part III examination) in place of the oral clinical examination.
- 32. Psychiatric Evaluation.** Renumbered to condition #21 and technical changes, as necessary. Adds provisions which allow the psychiatrist to consider all information provided by the Board, psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted, and failure to undergo and complete a psychiatric evaluation and psychiatric testing or comply with this requirement shall result in a violation of probation.
- 33. Psychotherapy.** Renumbered to condition #22 and technical changes, as necessary. Adds same requirements as the new condition #21.

- 34. Medical Evaluation.** Renamed to “Medical Evaluation and Treatment,” renumbered to condition #23, technical changes, as necessary and adds the Treatment condition. Adds that the evaluating physician shall consider any information provided by the Board or its designee prior to respondent’s evaluation. Following the evaluation, the Board shall determine whether or not additional restrictions need to be placed on respondent to ensure respondent’s ability to practice safely. It also adds specific timeframes to submit names of physicians for approval, to submit to medical treatment, and for the physician to submit reports to the Board. Failure to undergo and continue medical treatment or comply with the required additional conditions or restrictions shall result in a violation of probation. Incorporates informaton from previous condition #35.
- 35. Medical Treatment.** This condition was deleted and incorporated into new condition #23.
- 36. Monitoring.** Renumbered to condition #24, technical changes, as necessary and added Practice – Billing to title. Specifies the frequency of the monitor reports, allows the Board to appoint the monitor from its panel of expert reviewers and allows the Board to monitor the billing records. Adds that in lieu of a monitor, respondent may participate in a professional enhancement program as specified.
- 37. Third Party Presence – Sexual Transgressors.** Renamed to “Third Party Chaperone,” renumbered to condition #26, technical changes, as necessary. Adds that the chaperone initial and date each patient medical record at the time the chaperone’s services are provided, and read the Accusation and Decision. Adds that respondent maintain a log of all patients seen for whom a third party chaperone is required and that failure to do so is a violation of probation. Adds requirements that respondent provide written notification to patients that a third party chaperone shall be present and this notification shall be available for immediate inspection.
- 38. Restricted Practice – Incompetence.** Renumbered to condition #27 and changed “Restricted Practice” to “Prohibited Practice” in title. Adds that respondent shall provide an oral and written notification to patients that respondent does not practice, perform or treat a specified procedure on a specified patient population. Respondent shall maintain a log and maintain in patient’s file.
- 39. Provisions for Cessation of Practice.** Renumbered to condition 4a.
- 40. Restitution.** Renumbered to condition 27a.
- 41. Probation Costs.** Renumbered to condition 40 and added “monitoring” to title. Technical changes, as necessary.

**42. Notice to Employees.** Renumbered to condition #41.

**43. Changes of Employment.** Renumbered to condition #42.

**Additions:**

**Medical Record Keeping Course:** New condition #16. This course must be approved in advance and the respondent must enroll within 60 calendar days of the effective date of the decision. Failure to complete the course during the first six months of probation is a violation of probation.

**Professional Boundaries Program:** New condition #18, This program must be equivalent to the program offered by the PACE program and the respondent must enroll within 60 calendar days from the effective date of the decision. Failure to participate and successfully complete all phases of the program is a violation of probation.

**Solo Practice:** New condition #25. Respondent is prohibited from engaging in the solo practice of podiatric medicine.

**Notification:** New condition #28. Prior to engaging in the practice of podiatric medicine, the respondent shall provide a true copy of the Decision(s) and Accusation(s) to various entities. This condition is an expanded version of our former stay order (condition #6).

**Supervision of Physician Assistants:** New condition #29. This is a Medical Board provision prohibiting the supervision of Physician Assistants.

**DISCIPLINARY ORDERS** – New Conditions 1-3

**OPTIONAL CONDITIONS** – New Conditions 4-27a

**STANDARD CONDITIONS** – New Conditions 28-42

Underlying Data

“Manual of Disciplinary Guidelines with Model Disciplinary Orders,” revised October 8, 2004.

Business Impact

This regulation will not have a significant adverse economic impact on businesses.

### Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

### Consideration of Alternatives

No reasonable alternative to the regulations would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.